

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Michael Foster, : CASE No. 1:12 CV 2030

Petitioner, :

v. :

Jason Bunting, Warden, : **ORDE**R

Respondent. :

Pending before this Court is a habeas corpus action filed pursuant to 28 U. S. C. § 2254. The matter before the Court is Petitioner's RULE 7 Motion to Expand the Record (Docket No. 11). Petitioner seeks to add to the record, a one page affidavit that addresses his procedural challenges.

RULE 7 OF THE RULES GOVERNING SECTION 2254 CASES confers on the Court the authority to expand the record with materials relating to the petition. The rule provides that:

- (a) If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. The judge may require that these materials be authenticated.
- (b) The materials that may be required include letters predating the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. **Affidavits may also be submitted and considered as part of the record.**
- (c) Review by the Opposing Party. The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

HABEAS RULE 7 permits federal habeas courts to "direct the parties to expand the record by

submitting additional materials relating to the petition.” *Parker v. Warden, Lake Erie Correctional Institute*, 2013 WL 1351244, \*20 (N.D.Ohio,2013) (*citing* RULES GOVERNING § 2254 CASES, RULE 7, 28 U.S.C. foll. § 2254 (2010)). Expansion of the record is not mandatory and “is left to the discretion of the trial judge.” *Id.* (*citing Ford v. Seabold*, 841 F.2d 677, 691 (6<sup>th</sup> Cir.1988), *cert. denied*, 109 S.Ct. 315 (1988)).

Under the foregoing authority, the Magistrate finds that the Motion to Expand Record with a proffered affidavit is not necessary to a full and fair consideration of the claims in this Court. The affidavit presents a routine summation of the allegations made in his Traverse. The affidavit fails to offer a new rule of constitutional law, newly discovered evidence or alert to the presence of a previously undiscovered factual affirmation. Petitioner’s Motion to Expand the Record must therefore be denied under the relevant provisions of RULE 7.

**IT IS SO ORDERED.**

/s/Vernelis K. Armstrong  
United States Magistrate Judge

Date: May 13, 2013